



Maryland Aviation Administration

"Striving to do our best in everything we do - dedicated to providing outstanding airport facilities and services"

DOCKET FILE COPY ORIGINAL

Theodore E. Mathison Executive Director

October 30, 1997

Office of the Secretary
Federal Communications Commission
Washington DC 20554

97-182
OCT 30 1997

RE: ~~Docket No.~~ FCC 97-296

"Preemption of State and Local Zoning and Land Use
Restrictions on the Siting, Placement and Construction of
Broadcast Station Transmission Facilities"

Dear Sir or Madam:

The Maryland Aviation Administration (MAA) is opposed to the Federal Communications Commission's (FCC) proposed rule regarding the preemption of state and local land use restrictions on the siting towers for television broadcasting. The MAA, a modal unit within the Maryland Department of Transportation, owns and operates Baltimore/Washington International Airport (BWI) and its reliever, Martin State Airport (MTN). In this capacity the MAA has been granted authority, under the Transportation Article of the Annotated Code of Maryland, § 5-501-511, to adopt airport zoning regulations to protect the aerial approaches to these airports. It is the responsibility of the MAA to ensure that air traffic routes in the immediate vicinity of its airports are free of obstructions that could pose a hazard to aviators, air passengers and, thereby, to the residents of the neighboring communities. The MAA is also responsible for maintaining a usable system of airports in the State for the benefit of local businesses and travelers. With that mandate, the MAA strongly objects to the usurpation of its authority with regard to the siting of tall structures in the vicinity of state-owned airports, and further objects to the short time limits suggested for the review of such structures.

The Federal Aviation Regulations (FAR) Part 77 set standards for determining when a structure constitutes an obstruction to air navigation. Part 77 also provides for the conduct of aeronautical studies to determine the effect of proposed structures on the use of air navigation facilities or navigable airspace by aircraft. The Federal Aviation Administration (FAA) sets the standards for assessing hazards, but state and local governments have the responsibility for the enforcement of those standards. Maryland law requires that the MAA deny any request for an airport zoning permit at state-owned airports under which a structure would be erected or altered in such a way that it exceeded the Part 77 standards.

Copy

P.O. Box 8766, BWI Airport, Maryland 21240-0766 (410) 859-7100

FAX: (410) 850-4729 — TDD for the hearing impaired: (410) 859-7227

The Maryland Aviation Administration is an agency of the Maryland Department of Transportation



Office of the Secretary
October 30, 1997
Page Two

Petitioners denied a permit by the MAA have the right to apply for a variance from the Maryland Department of Transportation Board of Airport Zoning Appeals (BAZA). The BAZA variance process involves a formal administrative hearing requiring advance meeting notification and preparation of testimony by the applicant, the MAA and other interested parties. Written decisions denying or granting a variance follow the hearing by 120 days.

Both the MAA and BAZA rely, in part, on the findings of the FAA aeronautical studies in making determinations as to whether a structure poses a hazard. The FAA has 30 days in which to respond, at which time the response may indicate that further study is warranted. It is our understanding from the FAA that the communication towers in question can be 600 to 750 feet above ground level, and that most require study beyond the 30 day period. It is not reasonable for the MAA or BAZA to make their determinations without the complete findings of the aeronautical study, nor is it reasonable to decide that the inability of an agency to respond within 30 days constitutes a valid reason to ignore the potential for a threat to public safety.

This rule would impose adverse economic impacts. The Commission's recognition of its obligation to "reach a fair accommodation between federal and any nonfederal interests" does not fully recognize the federal interests represented by safe and unimpeded access to airports. Focusing on safety as the sole criteria ignores the role of airports in interstate commerce. Allowing the construction of towers in or near an approach path could curtail activity at an airport by limiting the conditions under which instrument approach procedures could be used. An FAA study might determine that a tower exceeded the standards, but did not pose a hazard to navigation. That tower could, nevertheless, obstruct an instrument approach path to the airport and reduce or eliminate the ability of aircraft to use that approach in low ceiling or visibility conditions. Limiting an airport's instrument approach capability constrains airport capacity and diminishes the usefulness of that airport to the community, and limits that community's access to the national air transportation system.

It is not the intention of the MAA to unreasonably delay action on any permit request, or of BAZA to unreasonably delay action on any request for a variance; however, decisions on the disposition of structures in the vicinity of airports should be made by aviation officials rather than arbitrarily decided by the FCC. This is wholly consistent with the basic principles of our Federal system recognizing that the so-called "police powers" of land use planning and zoning are enjoyed by the states, and that the proposed rule effectively seeks to preempt those powers. Both state and federal aviation bodies must retain the authority to review and oppose development of obstructions to air navigation, and must have the requisite time for review coordination.

Office of the Secretary
October 30, 1997
Page Three

For those reasons, the MAA concludes the proposed rule raises serious "Federalism Implications" within the meaning of Executive Order 12812, and thus calls upon the FCC to prepare the requisite "Federal Assessment" and make this both a part of the Docket and serve copies on all parties.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Schaus", written in a cursive style.

Nicholas J. Schaus
Deputy Administrator